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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,902	04/16/2004	Terrance W. Sutherland	1013-00031	8903
7590	11/08/2005		EXAMINER	
Jeffrey S. Sokol ANDRUS, SCEALES, STARKE & SAWALL, LLP Suite 1100 100 East Wisconsin Avenue Milwaukee, WI 53202-4178			GRAHAM, MARK S	
			ART UNIT	PAPER NUMBER
			3711	
DATE MAILED: 11/08/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/825,902	SUTHERLAND ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Mark S. Graham	3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 August 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-6,8-16 and 31-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6, 8-16, 31-38 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8-16, and 31-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snow in view of Belanger et al. (Belanger). Snow discloses the claimed bat with the exception of specifying different fiber angles for different areas of the bat. However, as disclosed by Belanger it is known in the art to vary the fiber angle depending on the area of the bat. Varying such allows the ordinarily skilled artisan to control the flexibility, tensile, or hoop strength in a particular portion of the bat. Absent a showing of unexpected results, it would have been obvious to one of ordinary skill in the art to have varied Snow's fiber angles in the manner claimed by applicant to provide a bat particularly tailored to a particular batter's needs.

Regarding the method by which the bat is constructed recited in claims 2 and 15 such are considered product-by-process steps and are therefore met by virtue of the claimed article itself being obviated.

Regarding claims 10, 11, and 31, absent a showing of unexpected results, the exact bending mode frequency and stiffness of the bat would have been up to one of ordinary skill in the art depending on a particular batter's needs.

Regarding claims 13, 14, 34, and 38, absent a showing of unexpected results the exact thickness and percentage of fiberglass fibers of Snow's bat would have been up to one of ordinary skill in the art depending on the strength vs. flexibility characteristics desired in the bat.

Concerning claim 16, the exact tolerances of Snow's bat would obviously have been up to the ordinarily skilled artisan depending on how fine a product one wished to produce vs. the cost in producing the product.

In response to applicant's arguments note Fig. 5 of Belanger and the text of Col. 5 beginning at line 6. Belanger clearly discloses winding the handle fibers at a lesser angle than the fibers in the barrel portion in a preferred embodiment. Fiber patterns wound at lesser angles as in the handle inherently provide greater stiffness in the bat as is well known in the art. This is what has been claimed. No "measuring system" has been claimed and whatever measuring system is used, in both applicant's bat and that of Snow/Belanger when the angle of the fibers in the handle relative to the longitudinal axis of the bat is lessened the stiffness is increased. This is exactly what applicant is stating with regard to fiber angles as explained in paragraph 88 of applicant's disclosure.

Concerning applicant's next argument, no mention of "two-dimensional intertwined tubular braid forms" is found in the claims. Snow discloses "multiple intertwined tubular braid forms" as claimed, and in any event as noted by applicant Belanger teaches the use of such to form braided layers for such bats.

Regarding the arguments over bending mode frequency and hoop mode frequency such would inherently result from a bat wound in the manner taught by Belanger because the same windings are taught in the same regions as claimed by applicant.

Concerning the stiffness in the handle of the bat Belanger clearly teaches a preferred embodiment where this is the case, (Fig. 5). The fact that Belanger does not specifically state

that a bat with fibers oriented as in Fig. 5 is not stiffer in the handle is irrelevant to the fact that this is inherently the case.

Applicant's citation of other bats with more flexible handles is irrelevant to the issue of what is disclosed in Belanger's bat. The examiner is well aware of other bats where it is desired to make the handle more flexible as well as other bats where it is desired to make the handle stiffer. None of these however, is relevant to what Belanger discloses in his Fig. 5 embodiment.

Applicant's arguments filed 8/25/05 have been fully considered but they are not persuasive.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Mark S. Graham at telephone number 571-272-4410.

MSG  
11/03/05



Mark S. Graham  
Primary Examiner